

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

PAMELA SHIRLEY BROWNING.,

Plaintiff,

v.

WAL-MART STORES, INC,

Defendant.

CV-05-BE-2003-W

ORDER

This case is before the court on Defendant's Motion to Sever and Remand (doc. 3). For the reasons set forth below, Defendant's Motion to Sever and Remand is **GRANTED in part** and **DENIED in part**. Specifically, Defendant's Motion to Remand Count One's claim under the Alabama Workers' Compensation Act is **GRANTED**. Defendant's Motion to Sever Count Two's claim for outrage is **DENIED**. Consequently, this entire case is **REMANDED** to state court for adjudication.

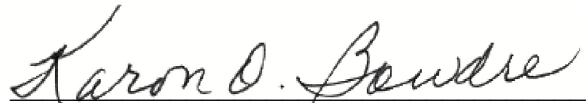
"A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States." 28 U.S.C. § 1445(c). Plaintiff's Complaint makes a claim for benefits "as she is entitled to under the Workman's Compensation Laws of Alabama." Compl., ¶ 6. Accordingly, Plaintiff's workmen's compensation claim should be remanded to state court for adjudication.

"A defendant or defendants desiring to remove any civil action...from a State Court *shall file* in the district court of the United States...a copy of *all process, pleadings, and orders* served upon such defendant or defendants in such action." 28 U.S.C. § 1446(a) (emphasis added).

Defendant requests that the court sever and remand Count One's worker's compensation claim, and retain Count Two's claim for outrage in federal district court. However, the Complaint filed with this court does not assert a claim for outrage. *See* Notice of Removal, Exhibit B, p. 3. The court cannot evaluate the propriety of adjudicating this claim without any evidence that the claim exists. The court has no choice but to construe the Complaint on file as asserting only a claim for worker's compensation; which, as previously discussed, is due to be remanded.

Because the filings submitted to this court only evidence a claim for worker's compensation benefits, Defendant's Motion to Sever and Remand is **GRANTED in part** and **DENIED in part**. This entire case is **REMANDED** to state court for adjudication.

DONE and ORDERED this 5th day of October, 2005.


KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE